

Serial No. 10/045,048
Art Unit 2136

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VIA FACSIMILE 571-273-8300

PATENT

Agent's Docket No. 12314-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

MARQUET, Bertrand et al.

Serial No: 10/045,048

Filed: January 15, 2002

Art Unit: 2136

Examiner: SHIFERAW, Eleni A

For: **COMPARTMENTED MULTI OPERATOR NETWORK MANAGEMENT**

July 10, 2006

**Commissioner for Patents
U.S. Patent and Trademark Office
Alexandria, VA 22313-1450**

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Action dated January 9, 2006 the Applicant requests a review of the Final Action, and provides arguments as follows:

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REMARKS

The Examiner has rejected the claims under 35 U.S.C. 103(a) as being obvious in view of Thornton, "Linux on the System/390" and in view of U.S. Patent 6,725,370 issued to Sakakura. Thornton teaches a method of porting Linux to the IBM System 390/mainframe architecture and a way of providing virtual machines on a single platform. Sakakura teaches a method of allowing different networks (such as the Internet and a LAN) to safely share a shared disk data area in a way that allows access control to the shared data.

In the Office Action dated June 21, 2005, the Examiner states that Adam (which should read "Thornton") teaches a network management/element system/method (page 2 paragraph 4), without providing any indication of where Thornton teaches this. The Examiner then indicates where Thornton teaches numerous other elements of the claims, while omitting any reference to the "network element" or to the "network management system" despite the wording of the claim elements. The Examiner indicates that Thornton does not explicitly teach access control, but that Sakakura discloses access control for users access request of shared memory data over the network. The Examiner explains the motivation for combining the references as being that "it would allow authenticating users of each compartment".

From this Office Action dated June 21, 2005, the Applicant took the Examiner's objections to mean that Thornton taught compartmentalization and that Sakakura taught authentication of users, and that these references could be combined to teach the present claims.

In response on October 11, 2005, the Applicant argued that "the present invention is not directed to a specific method of implementing compartments, but rather to the usage of the compartment method to provide a novel approach to network management. This is useful in network management of telecommunications systems and network elements therein, since network elements can be shared by independent operators from different carriers who wish to protect access to their respective network management systems". The Applicant then argued that Thornton did not teach a network management system nor a method of controlling access to a network element in

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a communication system, contrary to what the Examiner had asserted in the Office Action dated June 21, 2005. The Applicant also argued that the Examiner had not indicated where either Sakakura or Thornton teach that each operator accesses a network management system (as in claim 1) or that each operator accesses a network element (as in claim 8).

On January 9, 2006, the Examiner issued a Final Action. The Examiner mischaracterized the Applicant's arguments of October 11, 2005. The Examiner responded to the Applicant's arguments (pages 2 and 3) by stating that "Thornton fails to explicitly teach access control for the compartmented operating system" but that "Sakakura teaches supplying a data sharing mechanism to safely enforce the data sharing by the local network and the internet, supplying an application management apparatus and method for the applications that use a shared data, and supplying an access control configuration where one can access the shared data from a local network side or from an internet side". The Examiner did not address the Applicant's arguments concerning the network management system or the network element parts of the claim elements. The Examiner cites several portions of Sakakura (namely claim 11 and Figure 5; claim 4; column 8 line 67 to column 9 line 8, claim 15, figure 16 element 1603, and figure 23 element 2303). These portions all discuss access control to a shared data storing unit, but not a network management system.

In the response filed on June 9, 2006 (incorrectly dated July 9, 2006 but filed on June 9, 2006 as evidenced by the Certificates of Transmission by Facsimile) the Applicant reiterated that the present invention is not directed to a specific method of implementing compartments, but rather to the usage of the compartment method to provide a novel approach to network management. The Applicant provided a list of elements in claims 1, 2, and 8 which the Examiner had not shown as being taught by either Sakakura or Thornton:

"a network management system" (claim 1)

"whereby each operator accesses the network management system via the access control of the compartment assigned to that operator" (claim 1)

"a network element in a communications system" (claim 2)

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“whereby each operator accesses the network element via the access control of the compartment assigned to that operator” (claim 2)

“a method of controlling access to a network element in a communications system” (claim 8)

“whereby each operator access the network element via the access control of the compartment assigned to that operator” (claim 8)

Because the Examiner had not shown where these elements are taught by the cited references, the Applicant requested that the finality of the Final Action be withdrawn.

The Applicant also argued that neither Thornton nor Sakakura taught “the use of common operations software”, which is distinct from an operating system as taught by Thornton.

In response to the Applicant’s arguments of June 9, 2006, the Examiner issued an Advisory Action on June 23, 2006 rejecting the Applicant’s arguments. The Examiner provided a new reason for rejection, stating that “the network management or network elements of claim 1, 2, and 8 are taught by prior art Sakakura (see fig. 1)”. Not only is this the first time the Examiner has argued this, but the argument itself is invalid. While Figure 1 of Sakakura shows network elements, these are clearly not related to a network management system (as in present claim 1). Nor are the network elements accessed by an “operator” within a telecommunication system as the term is used in the specification and recited in the claims, which refers to operators of a network and not just to users of a network. The Examiner also states that “if applicant’s network management system is different from network management system of Sakakura, applicant is required to specify how the current application network management system is different, in the claims and specification as well”. The Applicant has twice argued that the cited references do not teach a network management system. The Examiner has referred to “the network management system of the storage server” (in the Office Action dated January 1, 2006, page 3 line 13), but did not equate this with the network management system of claim 1. The Applicant focused on the access control aspect of Sakakura because that was how the Examiner first used Sakakura, because the reference to the “network management system of the storage server” was done without explicitly referring to this network management system in comparison to the present claims but

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rather to address the access control provided by this network management system, and because no person of ordinary skill in the art would equate a "network management system of the storage server" with a Network Management System as the term is used when discussing maintenance of telecommunication networks by operators.

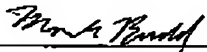
It is even unclear exactly what the Examiner means by the "network management system of the storage server". The Office Action of January 1, 2006 cites no portion of Sakakura. The Advisory Action cites Figure 5 and column 2 lines 21-67, neither of which refer to a network management system.

Furthermore, the Examiner has not indicated where either reference teaches common operations software, despite the arguments presented by the Applicant on June 9, 2006.

In conclusion, the Applicant does not believe that the Examiner has indicated where each and every element of the claims are taught by Thornton and Sakakura, either alone or in combination. No reasonable person would consider Sakakura to be addressed to operation of a network management system, and in fact Sakakura teaches controlled access to shared data areas and not controlled access to compartments having common operations software. Furthermore, the Examiner has not clearly addressed the Applicant's arguments of June 9, 2006, has ignored the argument presented with respect to the common operations software, and has introduced new arguments in the advisory action to which the Applicant has not had a chance to respond.

In view of the foregoing, it is believed that the Examiner has not provided a proper rejection of the claims and has not provided the Applicant with adequate opportunity to prosecute the claims. The Applicant requests reconsideration of the application.

Respectfully submitted,


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		First Named Inventor Bertrand Marquet, et al.	
		Art Unit 2136	Examiner SHIFERAW, Eleni A.
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